



United States Department of State

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By E-mail & Facsimile

President Fali S. Nariman
Professor S. James Anaya
Mr. John R. Crook
c/o Katia Yannaca-Small
Secretary of the Tribunal
ICSID, 1818 H Street, NW
Washington, DC 20433

Re: *Grand River Enterprises et al. v. United States of America*

Dear Members of the Tribunal:

On behalf of Respondent United States of America, we respond to the Claimants' letter dated December 4.

In August, Claimants notified the Tribunal that both parties would be available for the merits hearing during the period February 1 through February 12, 2010. At the same time, Claimants separately indicated that since federal criminal charges had been brought against claimant Arthur Montour, in the event Mr. Montour's criminal trial were to be adjourned to "March of 2010 or later," Claimants "would be forced to request a hearing adjournment so that Mr. Montour can defend properly the criminal charges."¹ In response, the Tribunal thanked the Claimants for advising of Mr. Montour's circumstances, but stated that the hearing dates of February 1-12, 2010 were "firm."²

Claimants, in their December 4th letter, attempt to revisit that issue. Eight weeks before the hearing is set to commence, Claimants now request to postpone the hearing until sometime after Mr. Montour's criminal trial, proposing July or August 2010—dates more than a year after the originally scheduled hearing. By contrast, Respondent United States has undertaken its work based on the Tribunal's scheduling order, and our hearing preparation is underway. Given the commitments noted in our August 7 letter to the Tribunal, our preference continues to be to hold the hearing as scheduled in February 2010.

¹ Claimants' letter to Tribunal dated August 14, 2009.

² Tribunal letter to parties dated August 25, 2009.

Moreover, we do not anticipate any overlap between the issues raised in Mr. Montour's criminal indictment and the issues to be addressed in our cross-examination of him. If Claimants were to perceive such an overlap during the cross-examination, they would be free to object to any line of questioning. As such, in the event that Mr. Montour is not made available for the hearing, the Tribunal should be willing to entertain any motion to strike or accord less weight to his written testimony in this matter.

Finally, we note that Claimants' allegations in their letter of an earlier plan to "surprise" Mr. Montour by cross-examining him at the merits hearing in June on issues "that only the Respondent knew" would form the basis of his criminal prosecution are reckless and false. Claimants' references to "Respondent's" criminal prosecution are in fact references to the criminal prosecution brought by the United States Attorney's Office in Seattle, Washington. This office in the Department of State first learned of that criminal prosecution from a news article dated July 2 ("New York man indicted in Blue Stilly Smoke Shop Case"). A copy of the article is attached at Tab A. A copy of the original indictment, dated June 25, is attached at Tab B.

Respectfully submitted,



Jeffrey D. Kovar
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Attachments

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